IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 1601 OF 1995

Jagdish Sukhlal Jhunjhunwala,
r/o Tolada – Ohio (U.S.A.),
through Power of Attorney
Ashokkumar Purshottamdas
Jhunjhunwala, aged 49 years,
Sarafa, Khamgaon,
District – Buldhana. ... PETITIONER

Versus

1. Resident Deputy Collector,
   Buldana.

2. The Rent Controller, Khamgaon,
   Tahsil – Khamgaon,
   District – Buldana.

3. Radheshyam Hanuman Agarwal
   Farshi (since deceased)
   through Legal Representatives -

   (a) Deleted.

   (b) Ramdatt s/o Radheshyam
   Agarwal, aged about 32 years,
   occupation – Business,
   r/o Opposite Vegetable Market,
   Farshi, Khamgaon.

   (c) Smt. Lata w/o Rajkumar Chudiwale
   c/o Bajranglal Balmukund Agarwal,

Telipura Square, Akola.

(d) Smt. Neeta w/o Sharadchandra Agarwal, c/o Sharadchandra Kedarmal Agarwal, Alsi Plots, Akola. ... RESPONDENTS

Shri B.N. Mohta, Advocate for the petitioner.
Shri J.B. Jaiswal, learned AGP for respondent No.2.
Shri A.S. Kilor, Advocate for respondent 3(b).

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CORAM : B.P. DHARMADHIKARI, J.
MARCH 02, 2007.

ORAL JUDGMENT :

Heard Shri Mohta, learned counsel for the petitioner – landlord, Shri Jaiswal, learned AGP for respondent No.2 and Shri Kilor, learned counsel for respondent No.3(b).

2. The grievance made by Shri Mohta, learned counsel, while challenging the concurrent orders passed by the Rent Controller and Appellate Authority, is that the authorities have erroneously come to the conclusion that

tenancy of respondent was yearly. He states that though what was let out was a godown, tenancy was monthly and for that purpose, he invites attention to written statement filed by tenant and also to his examination in chief and cross examination. According to him, therefore, there is failure to exercise jurisdiction. In the alternative, it is argued that even if tenancy is presumed to be yearly, it has been proved upon own admission of tenant that rent for the period from 10.12.1983 onwards has been paid in February 1989 and thereafter no rent has been paid till the date on which deposition of tenant was recorded before the Rent Controller on 12.6.1990. He states that these admissions demonstrate that even if tenancy is presumed to be yearly, rent has not been paid after expiry of tenancy year and hence permission under clauses 13(3)(i) and (ii) of C.P. & Berar Letting of Premises and Rent Control Order, 1949, (hereinafter referred to as Rent Control Order) ought to have been granted.

3. Shri Kilor, learned counsel for respondent No. 3(b) – legal heir of respondent No.3 – tenant contends that perusal of application filed by the petitioner before the Rent Controller itself reveals that tenancy was yearly and he has invited attention to para 4 of said application. He further states that the tenant has expressly pointed out that Mukhtyar of landlord used to come and collect rent as per his convenience and accordingly rent has been paid. He states that there was no warning or notice to the tenant by the petitioner and the petitioner has suddenly claimed that tenant was habitual defaulter. He, therefore, contends that both Courts below have rightly appreciated the controversy. He, further states that even if tenancy is presumed to be monthly, the pleadings and evidence on record show that the petitioner has sprung a surprise by labeling the tenant as habitual defaulter. He contends that there was never any warning or notice requiring the tenant to pay rent at particular intervals. In reply, Shri Mohta, learned counsel points out that there is

evidence on record tendered by the Mukhtyaar of present petitioner that on number of occasions he had called upon the tenant to pay the rent regularly every month and not to delay it.

4. With the assistance of both the counsel, I have perused the evidence, pleadings and orders. The perusal of application as filed reveals that the petitioner – landlord has stated that initially he has received the rent every year. It further appears that rent of Rs.3,200/- for the period from 10.12.1983 has been received in February 1989 without any objection and protest. Apart from the evidence of Mukhtyar of landlord that he orally warned tenant to be regular in payment of rent, there is no notice in writing issued by the petitioner to him in this respect. The burden to show that tenant was habitual defaulter was upon the petitioner and as such authorities below have rightly applied their mind in this respect. Even if it is presumed that tenancy was monthly and rent

was payable every month, the fact that rent for considerable period has been paid together and has been received without any protest or murmur shows the correctness in view reached by the lower authorities. I find that conclusions drawn by the Rent Controller as also by appellate authority cannot be lebelled as erroneous or perverse. There is no failure to exercise jurisdiction in view of the judgment of the Hon'ble Apex Court in the case of Rasiklal vs. Shah Gokuldas Waghajibhai, reported at 1989 Mh.L.J. 207. It is apparent that present petitioner has suddenly lebelled the respondent as habitual defaulter without making any demand in writing from him to be regular in payment of rent. The pleadings of respondent – tenant and evidence clearly show that there was a practice to the contrary and hence arguments of learned counsel for the petitioner Shri Mohta cannot be accepted.

5. I, therefore, do not find any merit in the present

writ petition. Writ Petition is accordingly dismissed. However, in the circumstances of the case, there shall be no order as to costs.

JUDGE

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